

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
Debtor. . Detroit, Michigan
April 2, 2014
9:00 a.m.
• • • • •

HEARING RE. NOTICE OF PRESENTMENT OF ORDER BY:
DEBTOR IN POSSESSION CITY OF DETROIT (#2921);
ORDER TO SHOW CAUSE WHY EXPERT WITNESSES SHOULD NOT BE
APPOINTED (#3170); MOTION TO ADJOURN HEARING REGARDING
THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER, PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 9019, APPROVING A SETTLEMENT AND PLAN SUPPORT
AGREEMENT AND GRANTING RELATED RELIEF HEARING (#3287);
EX PARTE MOTION TO EXTEND RE. DISCLOSURE STATEMENT
APPROVAL SCHEDULE (#3317)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: Court is in session. Please be seated.

2 Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. I'd like to begin with
4 the notice of presentment regarding the financing order,
5 please.

6 MR. ERENS: Good morning, your Honor. Brad Erens,
7 E-r-e-n-s, of Jones Day on behalf of the city. Your Honor,
8 we're pleased to be here for hopefully approval of the
9 quality of life financing that your Honor previously approved
10 on a preliminary basis in January. We presented the revised
11 order to you as part of our notice of presentment. We do
12 have some objections. I think most of the objections relate
13 to procedurally where we are. It's the city's view that,
14 again, your Honor approved this loan subject to presentment
15 of an order that comported with your ruling on January 16th,
16 and that's what we did. The objections take the position
17 that this is a completely new financing. For the reasons we
18 set forth in our reply to those objections, that's not the
19 case. If your Honor has any questions, we're happy to answer
20 them.

21 Your Honor issued an order on March 24th asking us
22 to provide additional information. We attached that as
23 exhibits to our reply. We filed blacklines of the financing
24 documents. We provided a schedule of expenditures and budget
25 as Exhibit F to the reply to the objections, and we provided

1 some other information just showing that the loan is no
2 different than the portion of the loan previously sought and
3 approved by your Honor on January 16th, so to the city that's
4 where we are. Again, happy to answer any questions or we can
5 just go to the objections, but we'd reserve time to reply.

6 THE COURT: All right. Thank you. Who would like
7 to be heard regarding this?

8 MR. MARRIOTT: Good morning, your Honor. Vince
9 Marriott, Ballard Spahr, representing EEPK and affiliates,
10 although I rise on behalf of a group of objectors and will
11 speak on their behalf as well as my own clients.

12 Mr. Erens is correct. Our objection to the proposed
13 order for the latest iteration of post-petition financing was
14 procedural. In other words, it is our view that the city
15 needs to proceed by motion rather than by mere presentment of
16 a proposed order. The presentment comes some six weeks after
17 the hearing on the original proposed financing and is with
18 respect to a different loan than the city was proceeding with
19 respect to the last time around. This Court may have offered
20 guidance to the city the last time around as to what it would
21 approve, but what the Court indicated it would approve then
22 was not the loan the city had at the time. In other words,
23 the Court was not approving this loan because this loan did
24 not exist six weeks ago. That matters, your Honor, because
25 circumstances have changed from where they were the last time

1 the city filed a motion seeking approval of post-petition
2 financing, and the city should be required to make a case for
3 this loan under present circumstances, not a different loan
4 under prior circumstances.

5 Now, what are the present circumstances and why do
6 they require a new showing by the city following a new motion
7 and a new hearing? Well, for one thing, Judge, we're six
8 months past the RFP that went out with respect to the prior
9 financing, which, in any event, was for a different loan,
10 different purposes, different amount. A determination that
11 the terms and conditions reflected in the loan -- new loan
12 are the best available to the city for a smaller loan with a
13 different purpose today can't be made from the record of the
14 last hearing.

15 Judge, moreover, because the uses of the loan are
16 not the same, questions as to need and structure arise that
17 the city should have to address. Specifically, no part of
18 this loan is being used to retire existing debt. Its only
19 use now is for what the city used to call quality of life
20 purposes but which it indicated at the last hearing was
21 really for working capital purposes. Nonetheless, the loan
22 is still structured as a term loan with all the proceeds
23 advanced at once rather than as a revolving credit, which is
24 far more typical of short-term working capital financing.
25 This results in what is likely to be unnecessary interest

1 expense since the city will be paying interest on loan
2 proceeds that it is not using until it -- unless it expends
3 all of the loan proceeds on the day of funding, which there's
4 no evidence it will do, which leads your Honor to an even
5 more fundamental question, which is whether at this stage of
6 the case with confirmation three and a half months away under
7 the present schedule it needs to borrow any money at all or
8 this will just result in expense but no benefit.

9 The Court requested that the city provide a schedule
10 of proposed expenditures to support the new loan. To my
11 understanding of schedule, the city did not do that. The
12 city provided you with illustrative but not binding
13 categories of potential expenditures. The real question,
14 your Honor, at this stage of the case is how much of these
15 proceeds can actually be spent between now and the end of the
16 case when the loan comes due. Are there any, quote, unquote,
17 shovel ready projects? If so, what are they, how much will
18 they cost, and why would the city be borrowing and paying
19 interest on more than those shovel ready costs, if any?

20 In short, Judge, the case that the city made the
21 last time around doesn't make the case for this loan this
22 time around. Accordingly, the city should not be permitted
23 to proceed by presentment of a form of order but should be
24 required to proceed in the normal fashion by motion and a
25 hearing, and that's our view.

1 THE COURT: Thank you, sir. Would anyone else like
2 to be heard? Response, please.

3 MR. ERENS: Thank you, your Honor. I guess we heard
4 two points, two main points in the objections. One is
5 somewhat new or at least a little different than what was
6 filed, which is why is the city doing this now, especially
7 with confirmation arguably on the horizon. There are clear
8 answers to that, your Honor. Again, that wasn't really the
9 main point of the filed objection, but we will respond. The
10 city has numerous projects that it really needs to attend to.
11 I think it's sort of obvious to everybody that there is a lot
12 of work to be done in the city. This loan originally, from
13 the city's perspective, was scheduled to close at the end of
14 2013, of course, subject to the court process. It couldn't
15 be guaranteed that that was the case, but the city had
16 projects ready to go back then and has projects ready to go
17 right now and is in the position that actually it has
18 deferred this infrastructure spending for some time and it is
19 ready to go the date the loan closes.

20 In terms of the argument that the loan is just being
21 used for working capital, I don't quite understand that, your
22 Honor. We did provide a schedule, again, at your request to
23 indicate what the city intends to use the money for, and,
24 again, the illustrative examples are police and fire, fleet,
25 maintenance, repair, staffing. This is not working capital

1 in the sense of just funding deficits and the like. We have
2 actual hard asset projects that are ready to go, also blight
3 removal, another major category. So with respect to that
4 type of issue, again, the city would simply say we're ready
5 to go. We have projects that we want to spend the money on,
6 and we will be spending the money on those projects if and
7 when the loan closes.

8 With respect to the issues about why now with
9 confirmation so close, again, it's the same issue. I mean
10 this is money that the city intends to spend, and it has
11 deferred these types of projects for some time and would like
12 to go forward.

13 With respect to the procedural issue, I guess, which
14 is what was really in the filed objection, the notice of
15 presentment has now been out for approximately -- I believe
16 we filed it on March 6, so it's not like we filed the notice
17 of presentment and were here two days later. This process
18 has been out there now for more than three weeks. I guess I
19 would say, one, a motion was not something we think was
20 required based on the Court's prior ruling. Your Honor
21 preliminarily approved the loan. But, nonetheless, we don't
22 really see the prejudice. We filed the order. The parties
23 responded with the objection that they responded to, and
24 we're now at the hearing.

25 With respect to the record, which I suppose is the

1 other aspect that was raised, does the record reflect -- or
2 does the record support, I suppose I should say, the entry of
3 the order, we think, yes, your Honor, clearly it does. The
4 record reflected a process whereby the city solicited
5 interest in this loan. Parties were asked and some did
6 submit proposals just for this portion of the loan rather
7 than the entirety of the loan at the time, which, again, was
8 the swap portion and then this portion. And it is the city's
9 and its advisors' collective wisdom that this is the best
10 loan available for this portion of the financing, the quality
11 of life financing. The Barclays offer has always been the
12 best offer, and there's no reason to believe there is a
13 better offer out there. I suppose the issue about
14 confirmation cuts both ways in the sense of this loan is
15 really only expected to be out for a relatively short period
16 of time from now until confirmation, so if you think about
17 it, if the city were to go out and solicit interest in a new
18 process, which would take a lot of time, it probably means
19 the loan would not actually close before confirmation. And
20 we don't expect to get a better deal, but we would have to
21 pay another commitment fee for a new loan, and with the loan
22 only being out for a short period of time, it's unrealistic
23 really to believe that the city would save money through a
24 new process. I can go through those details if you'd like to
25 understand better, but a commitment fee for a new process

1 would almost invariably eat up any benefit to a party
2 offering a lower price, but, again, the city doesn't believe
3 a lower price is out there, and that's reflected in the
4 testimony that was given to your Honor back, I believe, in
5 December and January and based on the collective wisdom of
6 the city and its advisors.

7 So, your Honor, we're ready to go. We're eager to
8 go. We've got projects to fund, and we are hopeful that you
9 will approve the loan at this time. Thank you.

10 THE COURT: All right. Thank you. Stand by,
11 please. Okay. Would anyone else -- are you all set?

12 MR. ERENS: Yes, I think so.

13 THE COURT: Okay. Would anyone else like to be
14 heard? All right. The Court is going to enter the order
15 that was submitted by the city or an order with minor
16 modifications to it if that's appropriate at this point in
17 time. The Court will overrule the objections at this time.
18 As the Court sees it, there are three such objections. One
19 is as to the adequacy of the record previously made to
20 justify the present loan and the present order approving that
21 loan. The second is as to the timing of this loan, and the
22 third is the question of whether the procedure that the city
23 has employed for the entry of this order violates any of the
24 procedural rights of the objecting parties.

25 The Court concludes that the record is adequate,

1 indeed, more than adequate to support the Court's approval of
2 the loan as it presently has been requested. The loan, as it
3 has been requested now, is sufficiently similar to the
4 loan -- the portion of the loan that the Court previously
5 approved that there is, in the Court's conclusion, no need
6 for any further development of the record in order to justify
7 this present loan. The considerations that led the Court to
8 approve the loan the last time, in the Court's view, still
9 apply and still support the approval of the loan.

10 As to the timing, the Court concludes that the
11 record does establish a certain urgency to obtain these funds
12 to begin the projects that the city feels the need to
13 commence at this time. This Court has previously held that
14 the city is service delivery insolvent. It is not providing
15 sufficient services to meet the basic needs of its citizens,
16 and this loan will provide the city with the means to begin
17 to make up that deficit, and it's important and urgent for
18 the city to do that. The city recognizes that importance and
19 that urgency, and the time to begin is now, if not before
20 now.

21 As to the procedural rights of the objecting
22 parties, the Court concludes that the process that the city
23 has employed, this notice of presentment process, has given
24 all of the objecting parties a fair opportunity to object and
25 to be heard regarding the relief that the city seeks here.

1 Could the city have filed a new motion? Of course it could
2 have, but was it required to in order to provide the
3 objecting parties with a sufficient opportunity to understand
4 what the city was trying to do and to object to it if they
5 did object? It did, so you may submit an appropriate order.

6 MR. ERENS: All right. Thank you very much, your
7 Honor. Your Honor mentioned minor modifications. Is that
8 something your Honor intends to do or directions?

9 THE COURT: If you're satisfied with the order that
10 was attached to the notice, that's fine. I just didn't know
11 if there were changes that needed to be made in the meantime.

12 MR. ERENS: I don't believe so, your Honor, but we
13 will confirm and get back to your chambers.

14 THE COURT: Okay.

15 MR. ERENS: Thank you.

16 THE COURT: Let's turn our attention to the order to
17 show cause why an expert witness should not be appointed.
18 Who'd like to be heard regarding this matter?

19 MR. CULLEN: I'll go first, your Honor.

20 THE COURT: All right.

21 MR. CULLEN: Thomas Cullen of Jones Day representing
22 the city. May it please the Court, good morning, your Honor.
23 I'd like to emphasize at least two things with respect to the
24 city's response to this. Number one, we were basically
25 meaning to affirm the Court's broad discretion to do what the

1 Court feels it needs to build the record we all need to
2 accomplish our common work here. We made certain suggestions
3 that we thought could be included in such an order, which we
4 thought furthered some of those objectives. These are not
5 must things, of course. These are considered things within
6 the Court's broad authority, which we recognize under 706,
7 and we think the overall process is a good one. And we think
8 that if the Court gets the experts that it needs or the
9 stature of person that the record might need for this that
10 those people will be the kind of people who set their own
11 agenda to some degree.

12 I thought it was -- I think it might be necessary
13 for us to address some of the talk about the city trying to
14 hijack the process or something of the sort, and if I could
15 digress briefly, what happened was is that we were working on
16 a draft 706 order to submit to the Court at the time the
17 Court's order came down and had been thinking about the issue
18 for some time. And in order to look at the feasibility of
19 that, we had gone out to talk to what we thought was a
20 preeminent expert who had refused to be a paid expert because
21 he thought it inconsistent with his scholarly integrity, and
22 he made the handsome offer that is reflected in our papers.
23 That happened before the Court's order came down. So far
24 from trying to hijack the process, I was left in -- we were
25 left in a position where we'd done some thinking about this.

1 We'd contacted an eminent individual who made a handsome
2 offer, and I could either be cute about that or share that
3 with the Court, which is what we decided to do. But the
4 basic message is that we think that the input of such expert
5 or experts would be useful to the Court. We think that a
6 procedure here, because we have a fast track, as other
7 motions will indicate this morning -- the procedure here
8 requires some thought, and that's why we suggested the mini
9 hearing, joint deposition, deposition in front of the Court,
10 call it what you will, I think clearly within the Court's
11 powers under 706 to get the expert's views in front of the
12 Court and the parties in an open forum subject to cross-
13 examination but at a point prior to the actual confirmation
14 hearing so that we could -- all the parties and the Court
15 could use those views, which would be part of the record, to
16 inform our positions and to, as we said in our papers, enrich
17 the record and direct our questioning and our focus better as
18 we move forward. That's where we were coming from with these
19 things. It is all in aid of -- we've got a common job of
20 work here. It's a hard job. Outside help from eminent
21 individuals beholden to no one is a great idea to help us all
22 do our work on behalf of the city, so that's -- we're in
23 favor. We think it's within the Court's authority. It's
24 within the Court's authority to do it any of the which ways
25 suggested to the Court, so we submit these ideas to the

1 Court's discretion and prudence.

2 THE COURT: Thank you, sir.

3 MR. MARRIOTT: Good morning again, your Honor.

4 Vince Marriott, EEPK and affiliates, again speaking for a
5 larger group. We filed a comment as well as a suggested
6 edited version of both orders. Our concern, as we expressed
7 in our papers, is not with the idea of the court-appointed
8 expert but with the scope that that appointment would
9 involve. Our concern is that feasibility narrowly defined is
10 too limiting a scope for such an expert. Determining whether
11 or not the city can meet or can reasonably be expected to
12 meet the obligations under its plan tends to push the plan
13 process in a direction toward the city limiting itself to the
14 minimum possible, the less the plan provides the city will do
15 for creditors and itself.

16 THE COURT: I'm not sure I understand why that's so.
17 I assume that parties who object to the plan on the grounds
18 that the plan does not meet the best interest of creditors
19 test will submit evidence of that, and that issue will have
20 to be dealt with as part of the plan confirmation process.

21 MR. MARRIOTT: We will submit evidence of that,
22 Judge, but because the requirements of the Bankruptcy Code
23 tie feasibility and best interest of creditors together,
24 they're really two sides of the same coin. It seems to us
25 that limiting the expert's scope to feasibility and not

1 having the expert also look at issues relative to best
2 interest such as, yes, the city -- what the city proposes to
3 do works, but so would other things that would be better for
4 creditors and result in a greater return to creditors, would
5 be better for the city and result in a better revitalization
6 of the city --

7 THE COURT: No, but here's what --

8 MR. MARRIOTT: I think all the --

9 THE COURT: Here's what motivated me to suggest
10 this, and it is precisely the argument you've just made. I
11 have doubted that any creditor will argue that the city's
12 plan is not feasible. Quite to the contrary, creditors will
13 argue that the city can do more. And it was that lack of
14 adversary process as to feasibility together with the
15 extraordinary importance of feasibility that led me to
16 suggest this. I have no doubt but that the adversary process
17 will work fully as to the best interest of creditors test.
18 What concerns me and what led to this hearing this morning is
19 whether the adversary process will work as to feasibility.

20 MR. MARRIOTT: And our concern is sort of a
21 corollary, which is if the expert is limited to feasibility
22 narrowly construed --

23 THE COURT: Um-hmm.

24 MR. MARRIOTT: -- that that will push the process
25 toward, for want of a better word, privileging feasibility

1 over best interests, and it is our view that you can't
2 privilege feasibility over best interests, that they are
3 joined at the hip, both are required to confirm a plan, and
4 that if there is to be a court-appointed expert on one piece
5 of the whole, that to prevent that from being privileged and
6 to give the Court and the parties the opportunity to explore
7 independently best interests as well, that the scope of the
8 expert's engagement really should be both. And I don't know
9 that it meaningfully burdens the expert beyond feasibility
10 only. The expectation is the expert is going to be looking
11 at what the city plans to do and in looking at what the city
12 plans to do will no doubt have views as to whether or not the
13 city could be doing different things that would result in
14 better outcomes. And our concern, again, is pushing the
15 process toward feasibility, being put on a pedestal and best
16 interest being secondary -- and that would be an outcome
17 that, in our view, would be not only inconsistent with
18 Chapter 9 but would result in a confirmation process that was
19 not going to lead to the best possible result. Do you have
20 any other questions of what we submitted? I think it's
21 relatively self-explanatory.

22 Oh, the other thing -- I'm sorry. I should make one
23 other point. The other thing that concerned us about the
24 form of order was that it suggested that the expert, whatever
25 his or her scope, would consult with the city only.

1 THE COURT: Yeah. I agree with you about that, and
2 that's a change that will have to be made.

3 MR. MARRIOTT: Okay. That was the other thing.

4 THE COURT: Right.

5 MR. MARRIOTT: Do you have anything further for me,
6 your Honor?

7 THE COURT: No, just to thank you for the
8 suggestions you and the city and the others made in response
9 to my order to show cause. I found many of them to be very
10 helpful and will incorporate many of them in the final order.

11 MR. MARRIOTT: There may be others who wish to speak
12 who I was --

13 THE COURT: Sure.

14 MR. MARRIOTT: -- not speaking on behalf of.

15 MR. ALBERTS: Good morning, your Honor. Sam Alberts
16 from Dentons on behalf of the Official Committee of Retirees.
17 We join in with the statements that have been made by Mr.
18 Marriott about the concern of balance. I would just like to
19 add one other point on that. I think that it is important
20 that if this Court were to retain an expert for himself --
21 and I understand the purpose of it and the desire to keep a
22 close eye on whether feasibility truly is met or whether or
23 not it's just being sort of sloughed off to the side to cut a
24 deal, but there is an issue of perception, and I think that
25 this case is very visible. There is a lot of concern in the

1 community that the process is fair and that the various
2 interests of the party are being perceived equally by those
3 that are involved in the process. And what I would suggest
4 is that it is important for this expert not just to focus on
5 the feasibility side of the test but also the best interest
6 side because in addition to giving, I think, that expert a
7 more fulsome view of the case and what may be truly doable
8 and feasible, it will also give, I think, more confidence to
9 people who are looking at this process that the expert is
10 truly looking at the right issues in a balanced way. And I
11 realize that in normally the adversarial process the city
12 would be arguing on one side. We'd be arguing on the other.
13 The Court has its own experts. I think that people are going
14 to want to know that this Court is being informed in a
15 balanced way, so I would rise to suggest that is another
16 reason for expanding the scope.

17 Now, with that said, I don't think the scope should
18 be as an uber-expert, and I don't think that's what the Court
19 was suggesting, some expert that would override all of the
20 other experts in this case, but as someone who was helping to
21 inform the Court. So with that, your Honor, unless the Court
22 has any questions --

23 THE COURT: Yeah. It is the Court's intent that
24 this expert, assuming we can find one, would be treated in
25 all practical senses like the other experts.

1 MR. ALBERTS: Okay. Thank you very much, your
2 Honor.

3 MR. HOWELL: Good morning, your Honor.

4 THE COURT: Mr. Howell.

5 MR. HOWELL: Steven G. Howell, Dickinson Wright,
6 special assistant attorney general appearing on behalf of the
7 State of Michigan. We are here this morning to support the
8 Court's order. We share the Court's concern on feasibility.
9 We have expressed that concern numerous times to the city and
10 to the other parties that we have spoken to during the course
11 of this case. We have pushed on that issue on a regular
12 basis. We believe that the greatest opportunity for success
13 in this case exists now, and we must get it right the first
14 time. We believe that the success achieved must be long-term
15 and lasting. Feasibility is the key to that. And we defer
16 to the Court to judge best what it feels is most helpful in
17 coming to its decision, and so, your Honor, we stand in
18 support of the Court's entry of an order for an expert on
19 feasibility. Thank you, your Honor.

20 THE COURT: Thank you, sir.

21 MR. GORDON: Good morning, your Honor. Robert
22 Gordon on behalf of the Detroit Retirement Systems. I'll be
23 brief. I will presume that the Court has seen our papers as
24 well. We suggested some wordsmithing around some of the
25 order to make clear what retentions are relevant, both the

1 applicants and the applicants' firm and things of that
2 nature. We also generally express concern about the
3 nomination process and other things that would ensure an
4 arm's length process.

5 The only other thing I wanted to mention is that we
6 do join in the general concern about elevating feasibility
7 over best interests. I certainly understand and would
8 respect the Court's concern about a lack of adversarial
9 process with respect to the feasibility issue itself, but we
10 would just simply urge the Court to consider ways to make
11 sure that feasibility does not become the end-all, be-all and
12 elevate it over the other issues, so we just wanted to
13 join --

14 THE COURT: I do have a couple of questions for you
15 about issues that I think your paper raised. As a general
16 matter, I think that any party who has information that the
17 expert decides in his or her judgment he or she needs ought
18 to cooperate with that expert. I take it there couldn't be
19 any objection to that.

20 MR. GORDON: None, your Honor.

21 THE COURT: Okay. The question then becomes what to
22 order, if anything, about how such requests for information
23 are actually accomplished and how the responses to those
24 requests for information are actually accomplished. It
25 strikes me as potentially cumbersome to involve the Court

1 every time an expert wants something from a party and that we
2 ought to be able to devise some less formal but nevertheless
3 properly transparent process to do that, so that's my goal --
4 excuse me -- that's my goal for that. It doesn't seem to me
5 to be appropriate or even necessary to prohibit ex parte
6 communications, per se, between the expert and the parties to
7 the extent the expert in his or her judgment wants
8 information to go directly to the party. I do think it's
9 appropriate to prohibit ex parte communication between the
10 expert and the Court, and I indicated, I think, in one of the
11 suggested orders that any of those kinds of communications
12 ought to be in writing. Are we together so far?

13 MR. GORDON: Yes, your Honor, although I think
14 I've -- in certain situations I could imagine where the
15 expert may have -- I'm actually sort of thinking out loud,
16 and I shouldn't be doing that and may be saying something
17 against my own interest, but I would want the expert to have
18 some flexibility to be able to confer with you. It is the
19 court-appointed expert, and I understand that in other cases
20 there has been some methodology in limited circumstances for
21 communication with the Court, so I'm less troubled about that
22 than I am about --

23 THE COURT: Well, I appreciate that, but --

24 MR. GORDON: Sure.

25 THE COURT: -- as Mr. Alberts has pointed out,

1 everything -- everyone is watching everything we do here.

2 MR. GORDON: Yes, your Honor.

3 THE COURT: So I'm going to -- I want to try to
4 devise some means by which the expert can expeditiously
5 obtain the information needed to do the job that is at the
6 same time as transparent as possible, and, of course, any
7 such communications are subject to discovery, depositions or
8 cross-examination, et cetera. Okay.

9 The other question I had for you, the one you
10 mentioned about the actual selection process, it will be --
11 it would be extremely helpful to me to have input in the
12 selection process. Again, the question becomes how to
13 balance the need to do this expeditiously with the importance
14 of that input, so what I'm thinking of doing is inviting a
15 small subset of you all to participate with me in the
16 interview process and to do that interview actually in open
17 court on the record so that anyone who's interested can at
18 least sit in on if not participate in the interviews. And I
19 certainly agree with whoever made the comment that this
20 interview is not a Daubert hearing. To the extent we need a
21 Daubert hearing, we can do that later. This is just a
22 selection interview. Okay.

23 MR. GORDON: Agreed.

24 THE COURT: So what I'm thinking of is one
25 representative of the city to participate and two

1 representatives from the objecting parties' side, so I want
2 to ask the city to nominate someone, and I want all of you on
3 the objecting side to meet and confer and nominate four
4 attorneys from a cross-section of you from which I will
5 select two. Is there any objection to that? So I and three
6 of you will interview this person -- or these applicants, I
7 should say. So we'll set a deadline for the applications. I
8 will narrow the field down to the -- I don't know -- three or
9 four or five to be interviewed, and then we'll conduct the
10 interviews. Sir.

11 MR. ALBERTS: Your Honor -- I apologize, your Honor.
12 When you say the nomination of four, you mean four attorneys
13 to help the Court interview the witness. Does the Court also
14 ask from the other parties to -- or give us an opportunity to
15 nominate potential experts as well, or is that --

16 THE COURT: Well, I have very mixed feelings about
17 that specific question. My concern is that, as some of you
18 observed in your papers, if a party nominates a witness,
19 there's a public perception of some kind of connection, and I
20 don't want that, so my preference would be for you to solicit
21 applications yourselves if that's what you want to do. Now,
22 I will forewarn you when you do that that one of the
23 interview questions will be, "Who have you spoken to about
24 this nomination?" so I mean eventually it's all going to come
25 out.

1 MR. ALBERTS: Right.

2 THE COURT: But I think the optics of it are better
3 if we follow that route rather than you make nominations. I
4 know the rule allows for that. I don't think it requires
5 that, though.

6 MR. ALBERTS: Okay. I appreciate that, your Honor.
7 So if an expert witness or somebody may be interested, they
8 should contact the Court directly?

9 THE COURT: They should submit an application.

10 MR. ALBERTS: Yeah. Okay. Thank you very much,
11 your Honor.

12 THE COURT: Yeah.

13 MS. PATEK: Good morning, your Honor. Barbara Patek
14 on behalf of the public safety unions. And I think a lot of
15 what I'm going to say is going to be addressed, but I did
16 want to, for the record, make a couple of comments on behalf
17 of the public safety unions because we are the group who
18 stands, I think, on both sides of the feasibility
19 determination. And I think with the process that the Court
20 has indicated is going to be put in place, a lot of our
21 concerns are going to be addressed, but I think mainly what I
22 wanted to say is obviously there are a number of tremendous
23 advocates in this courtroom, and we're all advocates for our
24 particular constituency. And I think that it's very
25 important that this expert be truly independent if there can

1 be such a thing and, you know, that economics, as we know, if
2 that's the direction we're going, is not a science in the
3 same way that calculus or chemistry is a science. And given
4 the city's great political latitude in terms of framing the
5 feasibility question, one thing that the public safety unions
6 do not want to see get lost in the mix is the idea that it's
7 not just are the dollars and cents there to pay what has to
8 be paid going forward, which is obviously important to us
9 because if we're going to make an agreement with the city, we
10 want to know that we're going to continue to be paid, but the
11 flip side of that, as the Court recognized in its eligibility
12 opinion and in the comments it made earlier today about the
13 service delivery insolvency, is that particularly in the case
14 of public safety, you're dealing with a group of people who
15 the record in front of the Court says, you know, the morale
16 is low. They're underpaid. They're undermanned. They're
17 working in very difficult conditions, and they're now facing
18 not only cuts in their paychecks but in their pensions going
19 forward. And I think the need -- included in the need to
20 provide those essential services has to be that human part of
21 the equation. And I'm not talking about as a sympathy factor
22 but is the city going to be able to keep and retain a high
23 quality group of people to continue to perform those
24 services, and I think those are my comments, for the record.
25 Thank you, your Honor.

1 THE COURT: Thank you.

2 MS. CONNOR COHEN: Carol Connor Cohen from Arent Fox
3 for Ambac Assurance Corporation. Your Honor, I will be very
4 brief. I just want to return briefly to the feasibility,
5 best interest issue. I think that -- and we very much
6 appreciate your Honor's comments that you will view this
7 independent expert like the other experts in the case, but
8 the reality is that the independent expert is going to be
9 likely viewed as somehow more independent, more influential
10 because he or she is independent and not, you know, one of
11 the parties', you know, hired guns, to use a pejorative
12 phrase. And for that reason, we think it really is important
13 that the independent expert look at both sides of the coin,
14 look at both feasibility and best interest, because if
15 they're only looking at whether the city can make the plan
16 work and not whether the city has also done everything it can
17 do, it's likely to skew the analysis, and that's all I want
18 to say. Thank you.

19 THE COURT: Thank you. Would anyone else like to be
20 heard? Mr. Cullen.

21 MR. CULLEN: Briefly, your Honor. With respect to
22 the small issue of how to arrange the communications, it's
23 between the expert and the parties. It seems to me that
24 there are two alternatives available, one slightly more
25 formal, one slightly less. One is that the experts and the

1 parties could just keep a log of contacts and the nature of
2 the contacts and then make those logs available at a given
3 time. If that's -- if that provides insufficient control or
4 is thought to, then we could just have the expert or the
5 parties memorialize in a brief letter or note when such
6 contacts occurred, either one, so then you'd have kind of
7 real time notice of what was going on.

8 THE COURT: Um-hmm.

9 MR. CULLEN: Either would be acceptable to the city.
10 I think either would be workable without putting a logjam in
11 the process. And with respect to the interview process, I
12 assume that one of the -- one of the other things it won't be
13 like is a confirmation hearing that won't be -- you know, no
14 French kissing in high school as an objection or anything of
15 that nature, but also with respect to --

16 THE COURT: I won't ask you what you meant by that.

17 MR. CULLEN: Well, let's not reminisce, your Honor,
18 but the -- but I think that in the nomination process or in
19 the identification process -- and I would regard what we did
20 with Professor Glaeser as more of an identification than a
21 nomination, but that's terminology. But there may be other
22 people that come to us, and we might encourage them to -- we
23 might encourage them to apply as well.

24 THE COURT: Um-hmm.

25 MR. CULLEN: And I would -- and I would urge the

1 Court, as it thinks about these things -- and maybe it's
2 responsive to what the parties have said -- that it may help
3 the Court to have more than one, and it may be interesting or
4 not interesting to the Court that some might offer or prefer
5 to do it pro bono. I think that's an -- I think that's an
6 interesting point for the Court to wrestle with. All right.
7 Thank you, your Honor.

8 THE COURT: All right. Sir.

9 MR. FRIMMER: Good morning, your Honor. Rick
10 Frimmer, Schiff Hardin, representing FMS. More of an
11 observation than anything else, as you correctly point out,
12 the world is sort of watching. Ever since the docket
13 reflected the order to show cause, I know I have and I'm sure
14 other people have heard from many industry professionals
15 wanting to know how they get in on the action, so to speak.
16 I would suggest to your Honor that you're going to be
17 inundated with RFP's.

18 THE COURT: Um-hmm.

19 MR. FRIMMER: So I was wondering whether you had any
20 thoughts about what -- the paradigm qualifications you're
21 looking for and whether you intend to narrow the field. Are
22 you looking for an academic, financial industry type folks?
23 It just might be helpful to narrow it if you had notions
24 about that --

25 THE COURT: Um-hmm.

1 MR. FRIMMER: -- because -- or else you may have
2 hundreds of responses to your RFP.

3 THE COURT: Thank you. To be less flip, again, I'm
4 of two minds on the subject. On the one hand, I'm interested
5 in efficiency, which I think is the concern you're expressing
6 here. On the other hand, I don't want to be so efficient
7 that I exclude by definition someone who might be really
8 good, and I'm not sure that academic versus nonacademic makes
9 sense, so so far in my thinking I've declined to be any more
10 specific than I outlined in the proposed order.

11 MR. FRIMMER: As I say, mine is just an observation
12 that the --

13 THE COURT: Thank you.

14 MR. FRIMMER: -- panel of three, so to speak, that
15 ultimately will assist you are going to have to weed through
16 probably three categories of folks that are going to respond
17 to this. You know, some may be what I would refer to -- what
18 I could refer to as urban planner types.

19 THE COURT: Right.

20 MR. FRIMMER: Some -- most, I think, will be the
21 kind of financial advisory firms that do M&A work and all of
22 whom will be eminently qualified to --

23 THE COURT: Yeah.

24 MR. FRIMMER: -- numbers, so to speak.

25 THE COURT: Right. And you raise a good point. The

1 urban planning person who can look at the city's assumptions
2 may not be the same person who can look at the Excel
3 spreadsheet on the cash flows and projections.

4 MR. FRIMMER: That's my point.

5 THE COURT: So that's why I sort of left open the
6 possibility in the order that it may be two experts or maybe
7 more. I don't know. I'm open to what makes sense --

8 MR. FRIMMER: Well, again --

9 THE COURT: -- without burdening the process --

10 MR. FRIMMER: Yeah, and without delay.

11 THE COURT: -- and without compromising the
12 efficiency we all need. Thank you.

13 MR. FRIMMER: So I made the point. I mean it's
14 really more for you to think about, but --

15 THE COURT: Thank you.

16 MR. FRIMMER: -- you know, the consequences are
17 that, you know, if the panel -- that three-person panel along
18 with your Honor -- if it's more of an academic type, that
19 person will have to likely retain the numbers crunchers. If
20 it's a numbers cruncher, they'll probably have to work with
21 an urban planner because -- I think the city noted this in
22 their papers, and I think this was a perfectly legitimate
23 observation that feasibility, if you will, broadened or not,
24 still involves not only the question on do the numbers add up
25 but also the underlying assumptions --

1 THE COURT: Right.

2 MR. FRIMMER: -- from a planning standpoint --

3 THE COURT: Correct.

4 MR. FRIMMER: -- so that's why I pointed it out.

5 THE COURT: Thank you, sir. I think there was one
6 more or a couple more. Okay. Sir.

7 MR. PLECHA: Good morning, your Honor. Ryan Plecha
8 on behalf of the retiree association parties. I rise briefly
9 just to suggest to the Court that on the creditors' side, it
10 may be prudent to increase the number above two for the wide
11 array of creditors in this case without getting cumbersome,
12 but I think limiting it to two could possibly have a negative
13 impact, and to maybe allow the creditors to caucus and
14 suggest a number that's above two but in the realm of
15 efficiency I think would be prudent.

16 THE COURT: Okay.

17 MR. PLECHA: Thank you.

18 THE COURT: No. That's fine. If you all think we
19 can do this efficiently with more than two on your side, I'm
20 certainly willing to consider that. Mr. Alberts, was there
21 something further you wanted to say?

22 MR. ALBERTS: No. Mr. Plecha had said his own
23 piece.

24 THE COURT: He said it. Okay. All right. Well,
25 let's see. Today is Wednesday. By Monday or Tuesday of next

1 week, can you get me your suggestions to serve on the
2 interview committee? I do want to get the solicitation order
3 out today, so I will make the revisions to that and get that
4 entered today, and then we'll set a deadline for the
5 applications and an interview date. All right.

6 We will next turn our attention to the motion to
7 adjourn tomorrow's hearing.

8 MR. HACKNEY: Your Honor, good morning. Stephen
9 Hackney on behalf of Syncora. I rise on behalf of a number
10 of parties. I think a large majority of the objectors have
11 joined in the motion. I'd like to briefly run through the
12 rationale behind the motion and then also bring one
13 additional concern to the Court's attention that has sort of
14 come into focus this week with the depositions rather than
15 waiting to spring it on you tomorrow if we do go forward.

16 The continuance we've requested -- we've asked for a
17 continuance on the order of seven to ten days, and it's
18 principally in the -- principally of the view of just
19 allowing us better time to prepare and organize the hearing.
20 While we've had the term sheet, as you know, since early
21 March, we did not have the rather lengthy legal briefs that
22 were filed until a week ago Friday. We did not have the
23 settlement agreement itself and the proposed order until late
24 last Wednesday. And as you know, these are detailed complex
25 documents in their own right that in themselves relate to

1 other detailed and complicated contracts, and so our point
2 was just a simple one, which is that we believe a short
3 continuance also taking in light of the fact that we were
4 just in depositions on Monday will allow the parties to
5 better prepare their arguments and also better organize the
6 hearing, for example, by doing things like reaching some
7 agreement about -- with respect to the prior hearing, which
8 exhibits should still come in and which portions of that
9 hearing people think should be applicable to this hearing and
10 which should not. That's something that's more efficiently
11 done outside of the courtroom rather than trying to negotiate
12 it in front of you and having there be ambiguity about what's
13 in evidence and what isn't until we start the hearing, so
14 that is an example of a mechanical benefit that we could get
15 from a short adjournment. There won't be any prejudice to
16 the city by a short adjournment, your Honor, because, of
17 course, they will --

18 THE COURT: Didn't I already suggest that I didn't
19 see any reason why everything in the prior hearing can't be
20 considered evidence in this hearing?

21 MR. HACKNEY: What I took your statement to mean at
22 the last hearing was you had a colloquy with Mr. Hertzberg
23 where he said the prior hearing should come in in its
24 entirety, and I thought that you said can't it all just be
25 submitted and then I'll decide which of it is relevant and

1 which of it is not, but I may have misunderstood your point.

2 I know there are times where in bench trials, right, you --

3 THE COURT: Well, I said that in utter agreement of
4 what Mr. Hertzberg was saying, not to suggest anything
5 different.

6 MR. HACKNEY: Okay. Well, I misunderstood then. I
7 would note, I guess, for example, Mr. Buckfire testified at
8 length in the prior hearing about the prior forbearance
9 agreement. That's the type of thing where there may be
10 portions of Mr. Buckfire's testimony that are still relevant.
11 It seems to me that there are large portions of his testimony
12 that might not be relevant. My suggestion is that it would
13 be better for the parties to have clarity, to the extent they
14 can, about what they're contending from the prior hearing and
15 what they're not.

16 Your Honor, it's a short continuance, and it's a
17 small point, which is just that there is a lot going on in
18 this motion. It's very important. It's complicated. I can
19 tell you, as one of the lawyers that's preparing on it, that
20 it was just to make an argument that we think that we can put
21 the hearing together for you better if we have a little
22 additional time.

23 I do want to raise something that is more important
24 and more substantial. I don't want to wait till tomorrow to
25 bring it to your attention, assuming I lose my adjournment

1 motion. There is a -- there's an emerging issue that's
2 important and that is factually intensive that relates to the
3 service corporations, so if you go back to the original term
4 sheet, what I would submit was less clear in that term
5 sheet -- it was clear the liens were all going to be released
6 on the collateral. I would submit that the injunction and
7 how the service corps were going to be handled was less clear
8 to me. You'll then see that a wave of objections come in
9 that are raising points about the structuring problems
10 relating to the service corporations trying to understand now
11 you're not including these service corporations, how are you
12 deciding their rights. And this goes to the core of the
13 motion because the city's goal here is to free up the gaming
14 collateral, and the lien is on the gaming collateral that's
15 held at least in the first instance -- and this is hotly
16 debated -- by the service corporations, so this is an
17 important issue.

18 Now, if I can say something that I would say is a
19 little bit of a recurring issue in this case is there's a
20 tendency by the city to file these motions that are a bit
21 threadbare when it comes to sort of the rationale of
22 relatively complicated legal issues. Then the objections do
23 a lot of work that try and suss out what all the objections
24 are, and then right before the hearing the city will file
25 very lengthy, very detailed briefs detailing all of these

1 things, what their responses are, what their thinking was
2 about why they can do what they're doing in the motion. And
3 that happened certainly on the first forbearance agreement.
4 I would say it's happened again here because the original
5 motion was basically like this settlement is basically the
6 same as the other settlement, so all the reasons from the
7 first settlement rationale in that hearing, they all apply,
8 and it basically just quoted all the different parts of the
9 transcript from that hearing. But then when we all pointed
10 out, no, no, no, there are major structural and legal
11 differences here that you have to take account of, then what
12 we get back are 90 pages of briefs a week ago Friday that do
13 go into a lot of different issues that you will not see in
14 the prior pleadings. Of equal importance, though, is the
15 fact that this service corp question -- on a week ago Friday
16 when they filed their briefs, the city came out with a new
17 rationale for why you can decide the rights of the service
18 corporations, and it was somewhat twofold. The first thing
19 they said is, well, the service corporations have acquiesced
20 in the motion, so they haven't objected, so you can do
21 whatever you want to them. And then the flip side of that,
22 they said, well, the service corporations are a shell, and so
23 you can disregard them and do whatever you want with their
24 rights. Those were the two rationales.

25 Now, let me first note that this issue is a big

1 ticket issue in the COP and validity lawsuit. This is one of
2 the city's core allegations in that lawsuit, so this is not
3 some kind of modest, you know, factual issue. This has
4 implications for many different things. Many large financial
5 issues kind of relate to this structure, the use of the
6 service corps at the center of this structure, the nature of
7 the composition of the service corps, which have city
8 employees, city council members, et cetera. I'm sure that
9 you've seen a lot of the pleadings on this. And I should
10 note also that this issue is further contentious by the fact
11 that the city and the swap counterparties themselves disagree
12 between each other with respect to this issue of the service
13 corporations because, of course, the swap counterparties in
14 their brief do a pretty thorough job establishing the
15 legality and vitality of the service corporations, so it
16 isn't just me saying that this is a big ticket disagreement
17 issue that has wide-ranging implications. You can actually
18 see it in their briefs.

19 This issue is, you know, further nuanced a bit by
20 the fact that the service corporations were apparently
21 sufficiently alive and well in July of last year to sign up
22 to the forbearance agreement and represent that they were
23 validly existing and authorized to enter into the agreement
24 but now are apparently sham corporations that are lying there
25 dormant and incapable of doing anything, and I would say it's

1 also further -- raises important due process questions like,
2 for example, my review of the motion that was filed, and I
3 will -- I've checked this personally. I believe others in my
4 office have checked it. I don't think that motion was served
5 on the service corporations, so making this acquiescence
6 argument when the motion itself wasn't served on the service
7 corporations I think has significant due process issues, and
8 it's complicated further by the fact that in the COP and
9 validity case recently, the service corporations' counsel
10 appeared and negotiated a stipulation about what they are
11 going to do in that case. And I don't know what the story is
12 behind how that law firm was retained or how it came to
13 represent the service corporations. My point is simple.
14 There is a lot going on here with respect to the service
15 corporations, and I think that my view coming into today's
16 hearing was to say to you that if tomorrow's hearing is not
17 going to decide the rights of the service corporations,
18 including not obliterate their liens or bind them to
19 agreements they haven't signed, then I don't think that this
20 is a basis to continue the hearing. But if the city's
21 rationale of acquiescence or the fact that they're a shell
22 corporation is something that they are going to attempt to
23 put forward despite the fact that neither of the witnesses
24 that we deposed this week have any firsthand knowledge about
25 the service corporations -- both were clear that they

1 disclaimed any knowledge -- there isn't any documentary
2 evidence on the exhibits that have been disclosed. If they
3 are going to attempt to have you base your ruling on those
4 rationales or make findings about those things, then I think
5 we have to all take a step back and consider, wait a second,
6 how is this going to work from the standpoint of discovery
7 and litigating this issue, does it need to be coordinated
8 with the other proceeding, et cetera. That was the way I saw
9 this breaking down. I didn't want to stand up and say that
10 tomorrow because you can see the way it dovetails with our
11 continuance motion. To the extent you agree it is an issue,
12 you can see it could affect the schedule, and that was what I
13 wanted to bring to your attention. Thank you.

14 THE COURT: Thank you, sir.

15 MR. MARRIOTT: Your Honor, Vince Marriott on behalf
16 of EEPK. I just want to, before the city has their
17 opportunity, emphasize the significance of this issue of
18 whether or not the service corporations are shells. That
19 allegation was made in support of approval of the settlement
20 agreement for the first time that I'm aware of in the city's
21 omnibus response to objections. It is significant to the
22 validity of litigation where billions of dollars are -- well,
23 nominal billions are at issue where an allegation has been
24 made in support of invalidity that the service corporations
25 existed only on paper and are shams. Insofar as the city

1 intends at the hearing on the settlement agreement to seek
2 approval of the settlement agreement in part on the basis
3 that the service corporations are shell corporations, that
4 has implications far beyond the settlement agreement. It is
5 a complex factual and legal question as to which we would be
6 entitled to significant discovery. When I asked Mr. Orr at
7 his deposition on Monday whether the city intended to
8 introduce evidence at the hearing on the swap settlement in
9 support of the assertion that the service corporations are
10 shell entities, his response was, "I don't know."

11 Insofar as the city wants to reserve the ability to
12 argue and present evidence on that point in connection with
13 the settlement agreement, we think that it has to be stopped
14 and we have to have a discovery schedule to deal with that
15 specific issue. If the city is prepared to say, no, we will
16 not seek a finding on that point and we will not seek
17 approval of the settlement agreement on the basis in whole or
18 in part of an allegation that the service corporations are
19 shell corporations, then I -- then this concern goes away.

20 THE COURT: Thank you, sir.

21 MR. HERTZBERG: Your Honor, Robert Hertzberg on
22 behalf of the city, Pepper Hamilton. Unlike counsel prior to
23 me, I'm not going to do my opening statement today on the
24 service corp issues. I'd like to address first a couple of
25 the issues raised and then get into some of the allegations

1 made in the motion.

2 First, counsel for Syncora was concerned that we
3 didn't follow the proper process on service of the motion to
4 compromise on the service corps. If you look at the
5 docket -- and I'm sure he could have looked at the docket --
6 he would have seen that we served Lewis & Munday with the
7 motion on March 12th and that they're the registered agents.
8 We also have served Butzel Long, who's now appeared on behalf
9 of the service corps in the COPs litigation, as soon as they
10 appeared with this motion also, so service isn't an issue.

11 Second, I want to clear up another misunderstanding
12 that was put on the record. Mr. Hackney indicated that they
13 have seen the term sheet since early March. In fact, Syncora
14 has had the term sheet since mid-February. As I indicated at
15 the prior hearing, we gave it to them or the bank -- we
16 authorized the banks to give it to Syncora in mid-February,
17 and they did. So when they stand up today and say that we've
18 had the term sheet since March, it's a little disingenuous,
19 to say the least.

20 In regard to the service corporations, Mr. Marriott
21 indicates to the Court that the motion or the omnibus reply
22 all of a sudden indicated that the service corps were shams.
23 Well, in fact, the COPs complaint, as we call it, which was
24 filed on January 31st of this year, had an allegation that
25 the service corporations were shams in it, so it didn't just

1 come in. This has been a known fact that it was the city's
2 position in the COPs complaint as early as January 31st. We
3 are only seeking in the settlement an injunction against the
4 service corps suing.

5 Now, let's address some of the issues raised
6 actually in the motion now and a little background. The
7 depositions, as required, were taken on Monday at my offices
8 of Mr. Gaurav Malhotra and Mr. Kevyn Orr. They had their
9 time. Each party -- several parties examined the witnesses
10 on the depositions. And shortly thereafter on Monday the
11 rough drafts of the transcripts were sent out by the court
12 reporter, Monday, the same day as the depositions. Second,
13 on yesterday, Tuesday, the actual final drafts or final
14 deposition transcripts came out.

15 The settlement agreement that they complain about
16 not having adequate time to examine was served on -- as we
17 told the Court it would be, on March 26, and one of the
18 complaints is -- and by the way, they make an issue about a
19 supplemental settlement agreement being filed the next day.
20 As everyone knows and just to point out for the Court's
21 benefit the reason a supplemental was filed, there was a
22 corruption in the document. The document is identical.
23 There was some corruption when it got filed in the document
24 itself. Nothing changed. Not a word on the document
25 changed. So it was filed on the 26th like we promised the

1 Court. They claim they haven't had time to adequately review
2 the settlement agreement, a 28-page settlement agreement.
3 When you look at the actual settlement agreement, if you take
4 out the signature pages and that, it's really a 20-page
5 agreement, 20 pages. These are some of the largest most
6 preeminent law firms in the country who have come before this
7 Court and said they can't get through a 20-page settlement
8 agreement in eight days prior to a hearing on the settlement.
9 I'm just not buying that, your Honor. It's not that hard,
10 especially when it almost identically tracks the term sheet
11 previously produced.

12 Their second basis for the adjournment is that there
13 was massive discovery dumped on them and they haven't had an
14 opportunity to sort their way through it. Once again,
15 massive law firms, preeminent law firms in the country,
16 haven't had the opportunity to do this.

17 What was produced? Well, first, let's back up to
18 the depositions. Only four of the documents or e-mails that
19 were produced were actually used at the depositions of the
20 two witnesses. Second, here's the documents that were
21 produced. The Court can look at them. I would suggest to
22 the Court that over 95 percent of these are simply minor e-
23 mails that say, "We'll do a conference call at four." "No.
24 How about two? How about tomorrow? Can we talk about this
25 issue?" There's not substance in these. We, through an

1 overabundance of caution, produced a mass of e-mails.
2 There's nothing in them except for about ten of them. If the
3 Court is willing, we would give this to the Court. I bet you
4 the Court could get through these in a one- to two-hour
5 period, but they'll tell you they haven't had adequate time
6 to get through this stuff. I'm not buying that, your Honor.
7 There's nothing in there that couldn't be reviewed within a
8 two-hour period at most.

9 They say that novel claims are involved here, and
10 that's why they need an adjournment. There's nothing novel
11 here. It's an \$85 million settlement that has a bar order in
12 it and provides for releases. There's nothing novel.
13 They've all seen it before in their career a hundred times.

14 They claim that there's -- Syncora points out or
15 claims there's two material differences from the term sheet,
16 and then they tell you in the motion to adjourn what they
17 are. One is the use of the words "specified plan." Yes,
18 it's a definitional term, but what it defines is already
19 something that was in the term sheet, so it only puts in a
20 definitional term.

21 Second, they claim that the settlement diminishes
22 the obligation of the city to make payment. That's not what
23 it says. The city is 100 percent obligated to make payment.
24 There was only a provision put in that the city would use its
25 best efforts if the money became trapped within the holding

1 accounts. Nothing changed, your Honor, no material
2 differences, one adding a term to a definition, the other
3 making sure the city uses its best efforts.

4 Then they complain about the blackline order, that
5 there's this massive blacklined order that they haven't had
6 an opportunity to get through. One, we did it as a courtesy
7 to the Court and to the parties to give the blackline order
8 well before the hearing. This was a courtesy. We had no
9 obligation to do it. We did it eight days before to give
10 them the opportunity so if there is an issue at the hearing,
11 they can come before the Court and raise the issue or discuss
12 it with us in advance. While they were busy preparing,
13 especially Syncora, all these different motions, DIA
14 subpoena, public lighting appeal briefs, motion to adjourn
15 the disclosure, motion to adjourn this, they could have been
16 reviewing these documents or the 20-page settlement
17 agreement. They've had more than adequate opportunity.

18 Then they allege that we didn't produce the draft
19 term sheets and the settlement agreements. This Court
20 specifically said we did not have to produce them. At the
21 hearing in which the Retiree Committee requested them in
22 number two of their request, the Court specifically said we
23 do not have to produce the items set forth in number two.
24 That was term sheets and settlement agreements. So when we
25 produced this stack of documents, we took out the drafts of

1 the term sheet and the drafts of the settlement agreements
2 because you said we didn't have to produce them, and we
3 didn't.

4 Syncora has objected to everything in this case.
5 They've taken the carpet bombing approach. Everything that
6 the city tries to accomplish, they move to adjourn or they
7 object to or they raise issues at the hearing. The service
8 corps are not an issue before the Court tomorrow. They've
9 been properly served. Court have any questions?

10 THE COURT: So just to pin you down on this --

11 MR. HERTZBERG: Okay.

12 THE COURT: -- it's not the city's intent to request
13 a finding as a result of the hearing on this motion, the
14 motion to approve the settlement, that the service corps are
15 shell or sham corporations.

16 MR. HERTZBERG: No, your Honor.

17 THE COURT: That's correct?

18 MR. HERTZBERG: That's correct.

19 THE COURT: Thank you.

20 MR. HUEBNER: Good morning, your Honor. For the
21 record, I'm Marshall Huebner of Davis, Polk & Wardwell on
22 behalf of Bank of America. Your Honor, suffice it to say
23 that we find the procedural motion before us to be rather
24 without merit and do take a little bit of exception to the
25 opening argument on one issue at tomorrow's hearing that they

1 took a shot at today, so let me be very surgical and precise
2 with respect to what's actually up today.

3 Number one, my memory, your Honor, is exactly as
4 yours. I thought you actually were quite clear in your
5 ruling when we were actually before you properly about the
6 scheduling of this hearing that all the evidence from the
7 prior multi-day trial could, in fact, be used and was
8 admissible. They're welcome to use whatever they like. I
9 actually don't think it'll be the focus of tomorrow's
10 hearing. It's just not an open issue. And to suggest that
11 really it would go much better for you if we all just took a
12 bunch of days and fought about this, that's what the month
13 was for. As a reminder, your Honor denied the debtor's
14 request to expedite this hearing and, in fact, set it for
15 substantially longer than is required either by the local
16 rules or by the national rules, and they've had 31 days to
17 prepare for this hearing. To say now the day before, "We
18 haven't had time yet," is really totally inappropriate.

19 Number two, your Honor, the fact that Mr. Hackney
20 didn't tether his argument about the service corporations in
21 any of the documents but just said it kind of shows you what
22 you need to know, which is that he's just throwing dust in
23 your eyes, and it's not really there, and let me explain why
24 quite precisely. Number one, there's a substantial section
25 of the term sheet called "Concerning the Service

1 Corporations." What was originally agreed to is exactly what
2 is going forward tomorrow. Number two, there's specific
3 sections of the order that did not change that were filed
4 almost a month ago that addressed the service corporations.
5 Nothing is new. Three, there is a section of the debtor's
6 brief, the opening brief, that is 42 pages long and actually
7 measurably longer than their reply brief, contrary to what
8 was suggested to you, that addresses the service
9 corporations. And, four, most importantly, is exactly the
10 colloquy you just had. There is no finding of any kind about
11 the service corporations and whether or not they're shams
12 because unsurprisingly, your Honor, we disagree very
13 vehemently. Our view, as you know, on the merits, were they
14 ever to be reached, which they are not because this is a 9019
15 settlement, is that the transactions were appropriate, the
16 liens were appropriate, the service corporations were
17 appropriate. Their view is to the contrary, and that's what
18 we've settled. So if Mr. Marriott stood up and said, "Your
19 Honor, here it is. Paragraph 39 of the order says I hereby
20 find the service corporations are shells, and we're not ready
21 to litigate tomorrow and it's not fair. They just snuck it
22 into the order," maybe that would be a legitimate basis for
23 an improper motion to reconsider your scheduling order,
24 improper, by the way, for lots of reasons, including the fact
25 that a week ago there was a contested discovery hearing, and

1 your Honor ruled on precisely with even more exactitude and
2 delineation what the schedule would be for this hearing,
3 including what day things were being filed and by when the
4 depositions were, and it was very finely reticulated. And so
5 what do they actually have; right? What they actually have
6 is we'd like a little more time. And to reiterate and not at
7 great length but some of what Mr. Hertzberg said -- and also
8 I should note that, you know, the schedule that your Honor
9 set, we should not actually lose sight of its generosity.
10 The reply briefs, which, as we all know, are often filed 48
11 hours before a contested hearing, were filed 13 days before
12 the contested hearing. Oftentimes plan support agreements,
13 all sorts of documents are filed five days before a voting
14 deadline or ten days before a voting deadline, and there are
15 hundreds or even thousands of pages of documents that
16 sophisticated law firms need to digest to appear at
17 confirmation. This is one settlement agreement. And by the
18 way, the two examples that they chose were -- they actually
19 proved the case. I'm not sure I could have come up with
20 better examples of how nothing has changed. What are their
21 two examples? The term sheet says the debtors shall keep
22 paying the monthly amounts and the counterparties shall
23 receive it. And in doing the documentation they said, you
24 know, "Once we've paid it, we can't promise that you'll
25 receive it. What if a nuclear bomb hits the custodian and

1 the money is just vaporized; right?" So we said, "Okay. You
2 know what? That's reasonable. You can't promise who you
3 don't control, so just say 'best effort.' We're fine with
4 that." That's an example of a radical change that a party
5 makes a motion to a federal court, needs to adjourn a
6 hearing? And the second one, your Honor, on specified plan,
7 I'm actually holding -- and I will not go through it because
8 I think it would not be necessary unless the Court wanted it,
9 but I have a color blackline showing how every single concept
10 basically of specified plan is right there in the term sheet.
11 The term sheet said we'll vote in favor of a plan that
12 provides the treatment contained herein, and then sprinkled
13 throughout the term sheet are these chunky sections that say
14 what a plan has to say. We just put them in one place and
15 used a defined term with a few other relatively minor
16 changes, and so the notion that, you know, the Court should
17 essentially pass the deadline for even making a motion to
18 reconsider, they should have a third or a fourth bite at the
19 scheduling of this hearing is really entirely inappropriate.

20 You know, leaving aside the content of this, I would
21 also note that the notion that Kirkland & Ellis, which has
22 potentially the largest litigation department in the United
23 States, actually filed a pleading that said there were 516
24 pages of discovery, not 516,000, not 516 million, 516 pages,
25 total pieces of paper, and eight days is not sufficient for

1 us to prepare for a hearing, I could not have signed that
2 pleading, and I'll leave it at that.

3 But suffice it to say, your Honor, that the
4 depositions happened. Everyone got to ask all the questions
5 they wanted. They were not particularly cut off in time.
6 Nobody left the hearing angry and frustrated, as far as we
7 can -- the depositions -- they put the documents they wanted
8 to in front of the witnesses proving that they had time to do
9 what they wanted to, and this like fifth bite at the apple to
10 move it onto their schedule. None of their substantive
11 arguments bear any weight, and they've had so much more time
12 than the debtors asked for or that any rule requires, and
13 there is no factual basis.

14 The last thing I would say in terms of the proposed
15 order, your Honor, which, again, we could walk through right
16 now if it were helpful to the Court, but to be clear, we went
17 out and tried to resolve objections. We listened hard. We
18 e-mailed everybody, including the remaining objectors, and
19 said, "Please communicate with us. We want to work things
20 out wherever we can narrow issues, wherever we can take your
21 language." So we're twice being penalized for doing the
22 right thing. Probably 90 or 80 or 70 percent of the
23 relatively minimal changes in the blackline order were to
24 resolve other objections, and two of them are now resolved,
25 and so it's a double courtesy. One, we had a highly

1 communicative process to narrow the hearing as much as
2 possible, and we're still working on language with Mr.
3 Marriott, for example, and with others to try to further
4 resolve everything we can. I will stay up all night. I'm
5 here in Detroit. Let me make a public announcement. We want
6 to resolve everything we can. But to say that because we had
7 the extreme courtesy to everybody to say in case you're
8 interested, here's the current version of the order mostly
9 because we're taking relatively minor changes to address
10 others' concerns, now the whole hearing should be adjourned,
11 it's crazy.

12 So, your Honor, it's a very troubling motion in
13 addition to the fact that they, frankly, slipped in a bunch
14 of oral argument about the service corporations, which really
15 has no place. There's no finding about them. There's one
16 narrow injunction. They were properly served. We're all in
17 Detroit. We're ready to go. This is a 9019 settlement. We
18 know what the facts are, and we'd like to proceed tomorrow.
19 Thank you.

20 THE COURT: Thank you. Would anyone else like to be
21 heard?

22 MR. HACKNEY: Do you mind if I respond?

23 THE COURT: No, no. Go ahead, sir.

24 MR. HACKNEY: There were a number of things that
25 were said. I'd like to just try and confine my response to

1 some of the more important ones. The first thing I wanted to
2 follow up on, your Honor, is that the notion of acquiescence,
3 the idea that the service corps have acquiesced in the motion
4 and haven't objected and asserted their rights, is something
5 that I think is highly connected to the allegation that they
6 are a shell corporation because both of these -- both of
7 these parties are saying --

8 THE COURT: Okay. But I invite you to make that
9 argument at the hearing.

10 MR. HACKNEY: Fair enough. And I raise it today to
11 not surprise you at the hearing. That's part of how I view
12 my role as an officer of the court because I do think it is a
13 big issue, and it is an argument that we will be raising.

14 The second thing I wanted to say, your Honor, is
15 that there's no question that we -- if we have to, we can try
16 up a hearing at anytime. You can try up something in an
17 hour. You could try it up tomorrow. You can pick an issue,
18 and we'll show up and try the issue to you. But I am someone
19 who is experienced in trial work, and I do have the judgment
20 and experience to make suggestions to the Court about how we
21 can better organize things, and this was my professional
22 judgment. These things have come in. The devil is in the
23 details with a lot of these pleadings, and remember it's easy
24 for Mr. Huebner to say it's all clear as a bell. They're the
25 ones that are doing all of this drafting. They're the ones

1 that have been in control of these documents for a long time.
2 Remember, we heard that this was a big emergency on April
3 2nd, but they didn't actually give us the settlement
4 agreement for over three and a half weeks, so the way the
5 schedule is being described here I think is kind of
6 misleading. It's like we're supposed to understand
7 everything about the settlement agreement and the revised
8 order from the term sheet even though there are changes and
9 even though we don't have the legal rationale until they give
10 us their reply briefs. I view it -- I'm living it -- as
11 being much more compressed than the way it is being
12 portrayed, and I will add this. This is a big motion. You
13 may recall from the last time we were in front of you you
14 asked Mr. Hertzberg what is the emergency. That was my
15 argument. What's the emergency? You asked Mr. Hertzberg
16 that. I don't think he really answered the question. I
17 think he said this agreement drives the plan, and I think
18 what you have to understand is that whether the -- if the
19 agreement were continued one month or two months, it has no
20 impact on the cash flow of the city because they're going to
21 comply with the terms of the collateral agreement as they've
22 been doing to date through the end of the plan, and then
23 there are different ways they pay off the remainder, so
24 there's no emergency from the standpoint of the city or
25 relating to this motion. What they want to do is they want

1 to take this very controversial settlement agreement that is
2 a settlement between only parties A and B of a complicated
3 structure that everyone has agreed is complicated and has
4 many different parties involved and that we assert that this
5 settlement between A and B trods upon the rights of C and the
6 rights of D and that that itself is a controversial concept
7 in the area of Rule 9019 -- what I'm saying is not disputed.
8 They want to -- it's not disputed in the sense that that's --
9 these are controversial legal issues. They want to take this
10 agreement around, and they want to bang away at retirees and
11 bang away at bondholders and say, "Now we've got you. We're
12 going to cram you down. And we're going to use this impaired
13 assenting class, and we're going to -- and that's what we're
14 going to do, so you better get in the boat." So this is very
15 important, and that is why we are suggesting that we
16 shouldn't just kind of sidle into court with part of the
17 theory that's emerged ten days ago being, "Oh, the service
18 corporations that are manned by city employees and city
19 council members, they've acquiesced in the city's motion to
20 destroy their liens and to bind them to the agreement as if
21 they had signed it even though they haven't." That's a big
22 issue, and neither of them have said because they can't,
23 "Well, we're not asking you to make that finding."

24 One last point, and then I'll sit down. Thank you
25 for your patience. I have to take exception to the notion

1 that Syncora is a carpet bomber; that we are a terrorist.
2 You know, you saw public statements by the city this week
3 demeaning Syncora and saying Syncora is throwing the kitchen
4 sink at everything and, you know, Syncora is just -- this is
5 their scorched earth strategy. You know, we asked for a one-
6 week continuance. Mr. Huebner says he couldn't even deign to
7 sign that pleading, and the city's press statements say that
8 we're engaged in a scorched earth litigation strategy. You
9 know, in the disclosure statement context, we get a bunch of
10 material dumped on us three days before our objection is due,
11 and we put a motion in in advance of that saying, "Shouldn't
12 there be some adjustment to the schedule here?" And that is
13 decried as well as more scorched earth litigation from
14 Syncora. And what I would say here, your Honor, is that
15 there are many times when you are asserting your legal rights
16 that it may not be popular to do so but that the way the
17 legal system works is that you have to assert those rights in
18 order to be heard on them, and it may not be popular or it
19 may not be what the city wants us to do, but I think it's
20 unfair. I think the constant ad hominem attacks against
21 Syncora as if we are, you know, committing war crimes when we
22 submit these briefs to the Court, I think it's unhealthy, and
23 I take exception to that suggestion that we've done anything
24 improper in the way we've proceeded in this court.

25 THE COURT: Thank you. All right. The Court will

1 take this under advisement for ten minutes, and we'll
2 reconvene at 10:35, please.

3 THE CLERK: All rise. Court is in recess.

4 (Recess at 10:29 a.m., until 10:40 a.m.)

5 THE CLERK: All rise. Court is in session. Please
6 be seated. Recalling Case Number 13-53846, City of Detroit,
7 Michigan.

8 THE COURT: The Court concludes that the record does
9 not establish cause to adjourn tomorrow's hearing.

10 Accordingly, the motion to adjourn it is denied. Since the
11 city has agreed that the issue of whether the service
12 corporations are shell corporations or sham corporations will
13 not be a matter for litigation tomorrow, all that remained to
14 the argument for the adjournment that the Court heard was a
15 matter of convenience and not a matter of addressing any
16 specific issue of prejudice or harm by proceeding tomorrow,
17 so, in the Court's view, this does not establish cause.

18 Let's turn our attention to --

19 MR. HERTZBERG: Your Honor --

20 THE COURT: Sir.

21 MR. HERTZBERG: -- one thing I just want to clarify.
22 Is the record from the prior hearing in evidence for
23 tomorrow?

24 THE COURT: It is.

25 MR. HERTZBERG: Okay. Thank you. And all the

1 exhibits that were introduced?

2 THE COURT: Yes.

3 MR. HERTZBERG: Thank you.

4 THE COURT: Let's turn our attention now to the
5 final hearing regarding the schedule for the disclosure
6 statement approval. Before we do that, however, I'd like to
7 ask you all to consider a matter of personal favor for me.
8 In your arguments to the Court, let's keep the war analogies
9 to a minimum, if not eliminate them from our discussion
10 altogether. Phrases like "scorched earth" and "nuclear" and
11 "carpet bombing" really are not necessary or appropriate in a
12 courtroom context, so let's just not use them. Okay.

13 MR. ORNSTEIN: Good morning, your Honor. Noah
14 Ornstein from Kirkland & Ellis on behalf of Syncora.
15 Unfortunately, with accommodating that favor, I'll have to
16 redo my entire opening.

17 THE COURT: And let me guess. You'd like an
18 adjournment to do that.

19 MR. ORNSTEIN: Appreciate it. No, your Honor. I'll
20 try to keep the presentation very short. There are a number
21 of people I know who would like to get up and speak also.
22 Your Honor, we really do think this is ultimately about
23 efficiency and fairness.

24 THE COURT: Could you pull that microphone closer to
25 you --

1 MR. ORNSTEIN: Certainly; certainly.

2 THE COURT: -- or aimed more towards you?

3 MR. ORNSTEIN: And I'll kneel a little, too.

4 THE COURT: There you go.

5 MR. ORNSTEIN: We really do think it's about
6 efficiency and fairness, your Honor. Your Honor, typically a
7 debtor files a robust or a somewhat robust disclosure
8 statement and then the 28-day clock begins to click even if
9 that disclosure statement does require that it be
10 supplemented. Your Honor, that wasn't the case here. On
11 February 21st the city filed a disclosure statement that was
12 substantially and materially incomplete by its own terms, and
13 then the city did not provide disclosures on a rolling basis,
14 as I believe it said it would, thereafter. And then on March
15 31st, your Honor, 38 days later, the city filed what is a
16 monster of a disclosure statement amendment, hundreds and
17 hundreds of pages of new material for parties to digest and
18 reconcile to understand. The city did, of course, obtain an
19 extension, as is appropriate, but it was only a two-day
20 extension. And, your Honor, we have made substantial efforts
21 to review the amended disclosure statement and the plan, of
22 course, and to form an educated view on the whys and hows and
23 the implications of the many changes, but, your Honor, we
24 don't think that there is enough time presently in the
25 schedule for parties to really figure out what they

1 reasonably still need to know, what all those implications
2 truly are, and we think that the process, for the city's
3 benefit also, will be benefitted by having some more time for
4 parties to be able to make those determinations, to actually
5 be able to confer with the city to produce refined objections
6 so that hopefully the issues around information gaps are
7 substantially narrowed from where they might be today if
8 parties were to file their objections, and ultimately we
9 think that will lead to what should be a smoother disclosure
10 statement hearing.

11 Your Honor, we think it's reasonable and required
12 that parties do have a reasonable period for review of the
13 disclosure statement. It is effectively a new document that
14 we've now had in our hands for 48 hours, and we don't think
15 that the request for two weeks is unreasonable. We are
16 willing, of course, and open to being constructive around
17 scheduling, but we do think it is warranted, your Honor, that
18 there be an extension of the timetable to permit parties to
19 do the work they need to do around the disclosure statement.

20 THE COURT: Thank you.

21 MR. MARRIOTT: Good morning again, your Honor.
22 Vince Marriott, EEPK. I rise in part to make a point that I
23 made last time we were here, which is that this case really
24 isn't the City versus Syncora. There are large groups of
25 constituencies that have views regarding how the city has

1 conducted the case that are not altogether positive. I think
2 your order to show cause regarding an expert was interesting
3 because of the responses. I think the responses illuminated
4 some interesting things about the dynamics of this case. I
5 thought it was of particular interest to see so many of the
6 constituencies grasping at the idea of an expert as a
7 lifeline for somebody who might actually take a hard look at
8 assets and operations with an eye toward maximizing creditor
9 recoveries within the context of recovery for Detroit.

10 Monday the city filed a revised plan and disclosure
11 statement, which, while bearing structural similarities to
12 the previous plan, is materially different and worse for
13 creditors economically. It is a plan that, you know, at
14 least as of 8 a.m. this morning has the support of no major
15 constituency. We are eight months into this case, and the
16 city has just filed a plan that moves backwards away from
17 consensus rather than towards it. In my view, this is
18 because the city has not engaged in a collaborative effort
19 toward consensus but, rather, has been trying to beat
20 creditors into submission.

21 There needs to be, in my view anyway, some sort of
22 reset here. A selected and appropriately charged court-
23 appointed expert would be one element of such a reset which
24 would bring creditors back into the process in a way that
25 they have not been for awhile. The other would be putting an

1 end to city-created unrealistic, inefficient, and unfair time
2 frames within which to respond to complex documents affecting
3 billions of dollars of claims and the future of Detroit. If
4 the plan process is going to continue with moving target
5 plans and disclosure statements, creditors and parties in
6 interest should at least have a reasonable period of time to
7 respond to each iteration. This is a major change from what
8 was there before. Tacking a couple of days on to review
9 hundreds of pages just is not affording to creditors and
10 ultimately to the Court the sort of review and comment that
11 this case really calls for. Thank you.

12 THE COURT: I appreciate the depth of concern that
13 your comments reflect, but my question to you is we're
14 talking about a disclosure statement which, in my experience,
15 admittedly in Chapter 11, not in Chapter 9, but,
16 nevertheless, material, I think, is that of all of the papers
17 in a case, the disclosure statement may be the least
18 important in that nobody but the lawyers who are retained to
19 object to it actually read it, so what are we talking about
20 here?

21 MR. MARRIOTT: I have an answer to that, your Honor,
22 which doesn't directly rebut what you just said. The answer
23 to that is this. The disclosure statement approval, while
24 perhaps in a vacuum, is a relatively -- is relatively less
25 consequential than, of course, confirmation.

1 THE COURT: Um-hmm.

2 MR. MARRIOTT: It, nevertheless, begins a process,
3 including solicitation, and where this plan process will
4 break down is if we have a disclosure statement and a plan
5 that changes materially again.

6 THE COURT: It undoubtedly will when and if
7 settlements are reached.

8 MR. MARRIOTT: Correct. And sending out something
9 that's --

10 THE COURT: If our --

11 MR. MARRIOTT: But once we -- once solicitation --

12 THE COURT: If we adjourn confirmation every time
13 there's a settlement, we'll never get there.

14 MR. MARRIOTT: But once the plan -- once the plan
15 has gone out for solicitation -- first of all, we know that
16 this plan is -- doesn't work for anybody because it's worse
17 than the last plan, and nobody was happy with the last plan.
18 It seems to me to be not advantageous to the process to keep
19 it moving to then start soliciting a plan that is just --
20 can't use a martial metaphor here but that will prompt
21 vigorous --

22 THE COURT: Thank you.

23 MR. MARRIOTT: -- opposition from all concerned. It
24 just seems to -- the point I'm making is although the request
25 here for a two-week extension is focused --

1 THE COURT: Isn't a better answer to that for you
2 all to get serious in mediation?

3 MR. MARRIOTT: Judge, it would be unwise for me to
4 comment on the success of the mediation process so far.

5 THE COURT: Then I'll withdraw my question.

6 MR. MARRIOTT: But the two-week extension sought
7 here as and to the extent that it would -- and it would
8 require a rollout of some of the other dates, although
9 nominally with respect to disclosure statement alone, in
10 fact, preserves, at least in my view, the integrity of the
11 process insofar as, you know, rushing to approve a disclosure
12 statement that relates to a plan that is going to result in
13 vigorous and extended opposition seems unproductive.

14 THE COURT: But if I take that to its logical
15 conclusion, we don't send out a disclosure statement or a
16 plan for balloting until when? A whole lot more people agree
17 to it?

18 MR. MARRIOTT: Well, I understand, Judge, that any
19 argument can prove too much, and I can certainly understand
20 how mine could as well, but in the context of a -- what
21 amounts to a whole new plan and a whole new disclosure
22 statement filed two days ago --

23 THE COURT: Um-hmm.

24 MR. MARRIOTT: And when I say "whole new," I
25 understand that there are structural similarities --

1 THE COURT: Right.

2 MR. MARRIOTT: -- but economically it's meaningfully
3 different, and the disclosure statement has been meaningfully
4 supplemented by an exhibit package and by significant other
5 documents that without arguing to you now that we need to
6 keep rolling it and rolling it and rolling it, it seems to me
7 it makes sense to do it this time for that reason.

8 THE COURT: And just for the record, even though I
9 retracted the question, I will clarify it that when I meant
10 you all should get serious about mediation, I meant the city,
11 too, but still the question is withdrawn.

12 MR. MARRIOTT: Okay. Other questions?

13 THE COURT: No. Thank you.

14 MR. MARRIOTT: Thank you.

15 MS. NEVILLE: Carole Neville from Dentons on behalf
16 of the Retiree Committee. Your Honor, we second what Mr.
17 Marriott has just said, but on a much more mundane level, we
18 sent the city a very detailed commentary on the original
19 disclosure statement --

20 THE COURT: Um-hmm.

21 MS. NEVILLE: -- and got back on March 28th we'll
22 either fix this or we won't and then two days later got a
23 major revision. Just on a mundane level, I would have to
24 file a very voluminous objection to disclosure that can be
25 resolved if we had a little bit more time. In two days or

1 three days, whatever we have left, I can't go back to Mr.
2 Bennett and Ms. Lennox -- and we've been working very hard on
3 the retiree solicitation package -- and resolve all of the
4 issues that I raised, and they're serious. There are
5 seriously misleading statements in the disclosure statement
6 that we would like to have fixed.

7 THE COURT: Um-hmm.

8 MS. NEVILLE: So I'm asking for more time just for
9 what you normally do in a disclosure statement is to resolve
10 the objections that we have.

11 THE COURT: Um-hmm. Thank you.

12 MR. CULLEN: Good morning, your Honor. Thomas
13 Cullen, Jones Day, for the city. A couple of observations.
14 All of this has occurred within the context of your Honor's
15 March 6th order, which I have in front of me here, which the
16 city understood and I think we all understood established a
17 schedule that had several characteristics. One, it was very
18 close-knit in terms of the relationship of one day to another
19 in the process. Number two, it was geared to get us to a
20 conclusion with the plan and to put pressure on the parties
21 to get to conclusions on various aspects of the plan because
22 the city needs to move through this process. Number three,
23 it's a very demanding schedule. It's hard on the horses.
24 There's no doubt about it. I take that as an agricultural
25 rather than a military, but --

1 THE COURT: I'm never going to hear the end of this,
2 am I?

3 MR. CULLEN: I'm sorry, your Honor. Part of the
4 process --

5 THE COURT: Why is Mr. Hertzberg laughing the
6 loudest?

7 MR. HERTZBERG: I just heard it. I didn't hear it
8 the first time. Mr. Erens had to tell me.

9 THE COURT: Okay.

10 MR. CULLEN: And so as part of this, you know, kind
11 of iterative process -- and this came up at the original
12 hearing -- February 21st the original plan, March 6th the
13 order, March 14th the deadline for parties to make objections
14 and issues, and we got a lot. We got a lot of objections and
15 issues, and we've been working hard to respond to those. And
16 I think that as the Court's order says in the block in the
17 middle on page 1 that this is only part of the process
18 between the parties of sharing information about the plan and
19 what can and can't be done with respect to the plan. It is
20 going on alongside a process of mediation, and that process
21 of mediation has been vigorous, has consumed a lot of time,
22 has consumed a lot of emotion on both sides, but has been
23 going on at a fairly vigorous rate. So it's been going on on
24 two levels at that time, and the voluminousness of the
25 objections led to a voluminous amount of changes. And what

1 we thought and came to your Honor with was the idea that
2 incorporating these changes took us longer than we thought.
3 We were going to miss our deadline by a couple of days, so we
4 moved a couple of the other deadlines by the same couple of
5 days attempting to maintain the integrity of your Honor's
6 schedule.

7 One of the particularly chewy items of disclosure
8 has been the plain language disclosure to go to the retirees
9 or the people who aren't financial professionals, and Ms.
10 Lennox, as was pointed out on our side, has been taking the
11 lead on that and working hard at that. We're hoping -- we're
12 trying to make progress on that. With the best faith in the
13 world, it is very difficult to make lawyers think like real
14 people, so we're working at that, and we hope to -- we do
15 hope to have some progress on that, but what we're afraid of
16 here with respect to this motion -- and we are sympathetic to
17 the demands on everyone. This has been a demanding process,
18 but it has been a demanding process for the city beyond the
19 realm of the professionals as well, and we'd like to move it
20 along. And we would not like to do things in this schedule
21 that would actually push off the solicitation date, that
22 would push off the other dates that really drive attention to
23 the plan.

24 I would note in passing that nearly all of the
25 objections to the disclosure fly into the teeth of 1125.

1 Apparently the disclosure is adequate enough for everybody to
2 say they don't like it, and 1125 really says is there
3 adequate information to give the parties a meaningful basis
4 to say yes or no. And what they're telling you is with
5 respect to the current configuration of the plan, there's
6 adequate information. It tells me no. We're hoping to
7 change that in the course of the mediation process and
8 continuing negotiation. We're hoping to have emendations and
9 settlements to the plan as we move forward. That's what
10 we're all working on, but as of right now, the plan, as your
11 Honor has said, has served that at least modest function set
12 forth in the statute, which is have I told you enough to let
13 you know whether or not you want to say yes or no. Well,
14 that, unfortunately, is, yes, I know enough to say no. So
15 what we're trying to do here is maintain the integrity of the
16 Court's schedule while recognizing we have an iterative
17 multi-level process going on, recognizing that we're going to
18 want to change the plan. We want this not to be the last
19 iteration of this, I think. I think that the parties -- all
20 the parties want it not to be the last iteration, but the
21 parties also want -- and the Court's schedule does this -- a
22 balance between a fair consideration of the alternatives
23 available to the city and the parties and the need to push
24 this along, the need to put the pressure of time and process
25 on those parties, so that's all I have, your Honor.

1 THE COURT: Thank you. All right. The Court is
2 going to take this under advisement and look at the issue of
3 whether there is a bit of slippage in the schedule that we
4 can take advantage of here but to maintain at the same time
5 the confirmation hearing schedule that we have established,
6 so I will issue a new scheduling order if that's appropriate
7 hopefully by the end of today.

8 Before we conclude, however, I do want to have a
9 conversation with Ms. Lennox. Will you approach the lectern,
10 please? Since you have been nominated as the point person
11 for the city on retiree disclosure issues --

12 MS. LENNOX: Yes, sir.

13 THE COURT: Is that a fair nomination?

14 MS. LENNOX: That is a fair nomination.

15 THE COURT: It has been widely reported by the press
16 that retirees who vote for the plan will receive more under
17 the plan than retirees who vote against the plan or not to
18 accept the plan. After spending an hour with a really bright
19 law clerk diving into the weeds of your plan and disclosure
20 statement, we came to the conclusion that while that may be
21 true in some circumstances, it is not true in all
22 circumstances. Is that correct?

23 MS. LENNOX: Let me explain how certain provisions
24 of the plan work, and it all has to do --

25 THE COURT: Well, I don't want the explanation.

1 What I want from you is your commitment again --

2 MS. LENNOX: Yes.

3 THE COURT: -- that in whatever explanation you
4 provide to the retirees and to the public as to what retirees
5 will be paid and when and under what circumstances some may
6 receive more of a cut than others, it is perfectly
7 understandable.

8 MS. LENNOX: I commit to that, your Honor. And, in
9 fact, I am not doing this in a vacuum. I am doing this --
10 I've been having three weeks of discussion with the Retiree
11 Committee counsel, the pension fund counsel, counsel for the
12 retiree associations, counsel for the safety unions, and
13 counsel for AFSCME. They've all seen the drafts. I've
14 received several rounds of comments on them for this exact
15 reason. We all want to be sure that what we give to people
16 is clear, accurate, and understandable, so I would expect to
17 be filing something with the Court in the near term for the
18 Court's approval to get the process started. That document
19 will undoubtedly change between now and the disclosure
20 statement hearing as the plan changes, and I think we have
21 made significant progress. I think there's one technical
22 issue that we're trying to work through now, but, please, I
23 want the Court to be assured that the city is not taking it
24 upon itself to do this without the input from the affected
25 parties, and we take the Court's --

1 THE COURT: And I appreciate that, but I'm
2 reconsidering here as I think about this my decision to let
3 go of my question to you --

4 MS. LENNOX: Okay.

5 THE COURT: -- because I'm concerned about the press
6 reporting of the plan because people will make decisions
7 probably much more on what they read in the newspaper than
8 what they read in the disclosure statement; right?

9 MS. LENNOX: I think, unfortunately, that's true.

10 THE COURT: So I mean is it accurate what the press
11 has reported that under your present plan --

12 MS. LENNOX: Under the present plan --

13 THE COURT: -- simply and straightforwardly, if a
14 retiree votes to reject the plan, they will receive less
15 pension?

16 MS. LENNOX: No. The decision is based on a class
17 vote. The class vote determines whether the outside funding
18 comes in or not.

19 THE COURT: All right. Well, to the extent you can
20 work with the media to correct any misimpressions they have
21 about not only how the plan deals with these claims but any
22 other claims, it's in everyone's best interest to have
23 accurate reporting.

24 MS. LENNOX: I wholeheartedly agree, your Honor.

25 THE COURT: So I encourage you to deal with those

1 people.

2 MS. LENNOX: We do deal with them on a daily basis,
3 and we do answer their calls. I can certainly see if there's
4 an education --

5 THE COURT: Well, but this is more than just
6 answering their calls. This is taking a proactive --

7 MS. LENNOX: Active education session.

8 THE COURT: -- approach in contacting reporters
9 whose stories need correction.

10 MS. LENNOX: Understood, your Honor.

11 THE COURT: My own dealing with them is that --
12 suggests that they want to report accurately, and they're
13 doing the best they can, and they're by and large doing a
14 really good job.

15 MS. LENNOX: I don't disagree, your Honor.

16 THE COURT: But there are occasionally details that
17 need correction, and they're happy to do that when you help
18 them --

19 MS. LENNOX: Understood.

20 THE COURT: -- or when they are helped, yeah.

21 MS. LENNOX: We'll devise a plan to reach out --

22 THE COURT: All right. Anything else for today?

23 Yes, ma'am.

24 MS. NEVILLE: Your Honor, I'd like to add to what
25 Ms. Lennox has said because we have been working very closely

1 on that supplement, and it is very clear what happens to the
2 retirees when they vote. The document that has been filed is
3 not, and that is why I really wanted more time.

4 THE COURT: I agree with you.

5 MS. NEVILLE: And the press is reporting on that.

6 THE COURT: I agree with you. It literally took my
7 really bright law clerk and I an hour to wade through this to
8 try to figure out what retirees will be paid. It was very
9 complex --

10 MS. NEVILLE: Right.

11 THE COURT: -- and it won't work.

12 MS. NEVILLE: The supplement we've been working on
13 is really clear --

14 THE COURT: Okay. Thank you.

15 MS. NEVILLE: -- but this document isn't.

16 THE COURT: Right. All right. Anybody else have
17 anything for today? All right. We're in recess.

18 (Proceedings concluded at 11:09 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

April 4, 2014

Lois Garrett